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NOT FOR PUBLICATIONUNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

FILED

JUN - 4 2010

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:) Case No. 09-29162-D-11
 SK FOODS, L.P.,)
) Docket Control No. LR-3
 Debtor.)
) Date: May 26, 2010
) Time: 10:00 a.m.
) Dept: D
)
)

This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of claim preclusion or issue preclusion.

MEMORANDUM DECISION

On April 20, 2010, Chase Equipment Finance, Inc. ("Chase") filed a request for allowance of an administrative claim in the amount of \$492,759.34, which is opposed by the chapter 11¹ trustee in this case, Bradley D. Sharp (the "trustee"). For the reasons set forth below, the court will grant Chase's request but allow the trustee to present evidence as to the appropriate amount of the claim.

I. THE POSITIONS OF THE PARTIES

Chase asserts an administrative claim for the estate's use of tomato processing equipment Chase had leased to the debtor in this case, SK Foods, L.P., prior to the commencement of the case, equipment that was later transferred to Olam West Coast, Inc.

1. Unless otherwise indicated, all Code, chapter, section and Rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036.

1 ("Olam") as part of the trustee's sale of the debtor's business
2 operations. The trustee contends that (1) the so-called leases
3 were not true leases, but rather, financing arrangements, and
4 thus, that Chase is not entitled to an administrative rent claim
5 in any amount, (2) if the court construes the leases to be true
6 leases, Chase has not met its burden of proving the extent to
7 which the estate used the equipment, and (3) that the estate used
8 only a small portion of the equipment for a short period of time,
9 and that further proceedings would be required to determine an
10 appropriate claim for such use. Chase replies that the trustee
11 is judicially estopped from denying that the leases are true
12 leases and that the estate's use of the equipment in its
13 operations and in the sale of the debtor's business constituted
14 an actual and necessary expense of preserving the estate on
15 account of which Chase has an administrative claim.²

II. ANALYSIS

17 This court has jurisdiction over the request pursuant to 28
18 U.S.C. §§ 1334 and 157(b)(1). The request is a core proceeding
19 under 28 U.S.C. § 157(b)(2)(B).

A. Judicial Estoppel

Judicial estoppel is an equitable doctrine that precludes a party from gaining an advantage by asserting one position, and then later seeking an advantage by taking a clearly inconsistent position. Rissetto v. Plumbers & Steamers Local 343, 94 F.3d 597, 600-601 (9th Cir. 1996); Russell v. Rolfs, 893 F.2d 1033, 1037 (9th Cir. 1990). This court invokes judicial estoppel not only to prevent a party from

26 2. As discussed below, the court finds it unnecessary to
27 determine whether the agreements in question were true leases or
28 disguised security agreements. Thus, the court uses the term
"leases" herein to describe the agreements or contracts in
question.

1 gaining an advantage by taking inconsistent positions,
 2 but also because of "general considerations of the
 3 orderly administration of justice and regard for the
 4 dignity of judicial proceedings," and to "protect
 5 against a litigant playing fast and loose with the
 6 courts." Russell, 893 F.2d at 1037.

7 5 Hamilton v. State Farm Fire & Cas. Co., 270 F.3d 778, 782 (9th
 8 Cir. 2001).

9 7 There are three non-exclusive factors a court may consider
 10 in determining whether to apply judicial estoppel: (1) whether
 11 the "party's later position was clearly inconsistent with its
 12 earlier position," (2) "whether the party has succeeded in
 13 persuading a court to accept that party's earlier position, so
 14 judicial acceptance of an inconsistent position in a later
 15 proceeding would create 'the perception that either the first or
 16 the second court was misled,'" and (3) "whether the party seeking
 17 to assert an inconsistent position would derive an unfair
 18 advantage or impose an unfair detriment on the opposing party if
 19 not estopped." Hamilton, 270 F.2d at 782-83, quoting New
Hampshire v. Maine, 532 U.S. 742, 750-51 (2001).

20 In the Ninth Circuit, application of judicial estoppel
 21 requires a finding that "the court relied on, or 'accepted,' the
 22 party's previous inconsistent position." Hamilton, 270 F.2d at
 23 783, citing Interstate Fire & Casualty Co. v. Underwriters at
Lloyd's, London, 139 F.3d 1234, 1239 (9th Cir. 1998); Masayesva
v. Hale, 118 F.3d 1371, 1382 (9th Cir. 1997).

24 The court will address these three questions to determine
 25 whether the trustee should be estopped from espousing his present
 26 position that Chase's agreements with the debtor were disguised
 27 secured transactions rather than true leases.

1 1. Earlier Contrary Position Accepted by the Court

2 Chase begins with the schedules filed in this case.³ The
 3 trustee listed on the G-schedule most of the debtor's agreements
 4 with Chase Equipment Leasing, Inc., and its predecessor, Bank One
 5 Leasing Corporation. Specifically, he listed various leases and
 6 lease amendments, identifying them by date and/or "lease schedule
 7 number;" namely, Lease Schedule Nos. 1000119253, 1000128455,
 8 1000129904, and 1000126293. He also listed a "Loan and Security
 9 Agreement," as Loan No. 1000119526, and in a later document, he
 10 added a second "Loan Agreement," No. 1000118109.⁴ In other
 11 words, he identified in total four "lease schedules" and two
 12 "loan agreements."⁵ Lease Schedule Nos. 1000119253, 1000128455,
 13 1000129904, and 1000126293 are the agreements under which Chase
 14 now asserts an administrative claim.

15 The trustee's decision to list these agreements on the G-
 16 schedule rather than the D-schedule is not particularly
 17 significant in light of the disclaimer included with the
 18 schedules:

19 Certain of the agreements listed on Schedule G may be
 20 in the nature of conditional sales agreements or
 secured financings. The presence of a contract or

21 3. The schedules and statement of financial affairs in this
 22 case were filed by the trustee rather than the debtor, pursuant
 23 to §§ 521 and 1106(a)(2).

24 4. See Exhibits A-B to Chapter 11 Trustee's Motion for
 25 Authorization to Assume and Assign Executory Contracts and
 Unexpired Leases in Connection With the Sale of Substantially All
 of the Debtors' Assets, filed June 15, 2009, Exhibit A, p. 23.

26 5. These appear to correspond with the "four equipment
 27 operating leases and two capital leases" with Chase the debtor
 28 had earlier identified. See Declaration of Lisa Crist in Support
 of Chapter 11 Petitions and First Day Pleadings, filed May 8,
 2009, ¶25.

1 agreement on Schedule G does not constitute an
2 admission that such contract or agreement is an
3 executory contract or unexpired lease.⁶

4 However, the distinction made in the G-schedule listings between
5 lease schedules and loan agreements and especially the language
6 of the disclaimer itself clearly support a finding that the issue
7 of leases versus secured transactions was or should have been on
8 the trustee's radar screen.

9 In fact, the question was addressed directly early on. On
10 June 11, 2009, apparently in response to concerns raised by the
11 proposed purchaser, Olam, Chase's counsel wrote to the trustee's
12 special counsel and financial advisors, presenting an analysis of
13 the issue and concluding that the lease schedules were true
14 leases rather than disguised secured transactions.

15 On June 15, 2009, the trustee filed two motions -- to
16 approve the sale of the assets of the debtor's business as a
17 going concern (the "Sale Motion") and to approve the assumption
18 and assignment to the proposed buyer of specifically enumerated
19 executory contracts and unexpired leases, including the Chase
20 agreements identified as Lease Schedule Nos. 1000119253,
21 1000128455, 1000129904, and 1000126293 and Loan Nos. 1000119526
22 and 1000118109 (the "Assumption Motion"). The Sale Motion
23 expressly addressed the issue of leases versus disguised secured
24 transactions, although not specifically in connection with the
25 Chase agreements:

26 / / /

27 6. Schedules of Assets and Liabilities for SK Foods, L.P.,
28 a California limited partnership, filed June 5, 2009, Global
Notes and Statement of Limitations, Methodology and Disclaimer
Regarding Schedules and Statements, ¶4(h).

1 To the extent the equipment is the subject of a true
 2 lease, the underlying lease will require assumption and
 3 assignment to the Buyer. The separate Assumption
 4 Motion filed by the Chapter 11 Trustee identifies those
 5 unexpired leases and executory contracts that the
 6 Successful Bidder has identified to be assumed and
 7 assigned as part of the Sale. It is contemplated that
 8 any equipment lessors to unexpired leases that are
 9 included as an Assumed Contract will support the
 10 assignment to the Buyer. The Chapter 11 Trustee
 11 intends to sell free and clear of any equipment liens
 12 representing disguised conditional sales contracts.
 13 The Chapter 11 Trustee further anticipates that the
 14 creditors will consent to the Sale (allowing the sale
 15 to occur pursuant to Section 363(f)(2)). In the
 16 absence of such consent, the Chapter 11 Trustee may
 17 sell free and clear of any equipment liens pursuant to
 18 Section 363(f)(3) (purchase price exceeds the value of
 19 the liens) or Section 363(f)(1) (as noted above).⁷

20 In support of the Sale Motion, the trustee declared, "The
 21 terms of the Purchase Agreement anticipate that the Sale will be
 22 conditioned upon the assumption and assignment of certain
 23 executory contracts and unexpired leases of the Debtors and
 24 certain Related Parties," and identified a list filed as Exhibit
 25 A, including the four Chase lease schedules and the two Chase
 26 loans agreements, as "a list of the Assumed Contracts which may
 27 be assumed and assigned as part of the Sale."⁸ In support of the
 28 Assumption Motion, the trustee declared, "In my opinion, the
 contracts listed in Exhibit A to the Assumption Motion will
 benefit the estate and the overall sale process."⁹

29 7. Chapter 11 Trustee's Motion for Order Approving Going
 30 Concern Sale of Substantially All Operating Assets Pursuant to 11
 31 U.S.C. § 363, filed June 15, 2009, ¶44.

32 8. Declaration of Bradley D. Sharp in Support of "Chapter
 33 11 Trustee's Motion for Order Approving Going Concern Sale of
 34 Substantially All Operating Assets Pursuant to 11 U.S.C. § 363,"
 35 filed June 15, 2009, ¶8.

36 9. Declaration of Bradley D. Sharp in Support of "Chapter
 37 (continued...)

1 On June 16, 2009, Chase opposed both motions on the ground
 2 of the trustee's failure to list and propose payment of the
 3 amounts necessary to cure existing defaults under the lease
 4 schedules. Chase also objected to the sale of its collateral
 5 unless its loans would be paid in full.

6 On or about June 19, 2009, the trustee, Chase, and the Bank
 7 of Montreal, as administrative agent for the debtor's primary
 8 secured lenders, entered into an Agreement Re Purchase of
 9 Equipment and Allocation of Proceeds of Sale (the "Proceeds
 10 Agreement"), in which the parties agreed that (1) Chase would
 11 transfer to Olam "the equipment leased by Chase to Debtors under
 12 the following leases (collectively, the 'Chase Equipment') [Lease
 13 Schedule Nos. 1000119253, 1000128455, 1000129904, and
 14 1000126293]," (2) Chase would transfer to Olam "the collateral
 15 securing the following loan agreements (collectively, the 'Chase
 16 Collateral') . . . (Loan 1000119526), and . . . (Loan
 17 1000118109)," and (3) in exchange for these transfers, Chase
 18 would be paid at least \$5,000,000 from the proceeds of the sale
 19 to Olam.¹⁰

20 The Proceeds Agreement also provided, at ¶4:

21 Chase's claims against the Debtors' bankruptcy estates
 22 shall not be reduced or affected by this Agreement,
 23 except such claims shall be reduced to the extent of
 24 the proceeds of the Chase Equipment and the Chase

25 9. (...continued)

26 11 Trustee's Motion for Authorization to Assume and Assign
 27 Executory Contracts and Unexpired Leases in Connection with the
 28 Sale of Substantially All of the Debtors' Assets," filed June 15,
 2009, ¶13.

29 10. See Order Approving Going Concern Sale of Substantially
 30 All Operating Assets Pursuant to 11 U.S.C. § 363, filed June 26,
 31 2009 (the "Sale Order"), Exhibit A.

1 Collateral that Chase receives pursuant to this
2 Agreement.

3 On June 26, 2009, by way of an order submitted by the
4 trustee's special counsel with a copy of the Proceeds Agreement
5 attached as an exhibit, the court approved the sale to Olam,
6 authorized the trustee to perform his obligations under the
7 Proceeds Agreement, and directed that the sale proceeds be used
8 "first to pay Chase \$5 million in accordance with the Proceeds
9 Agreement" The order expressly states that its terms and
10 provisions are binding on the trustee, among others.

11 In summary, the trustee submitted to the court a motion --
12 the Assumption Motion -- expressly identifying the Chase lease
13 schedules as leases to be assumed by the trustee and assigned to
14 the buyer, and another motion -- the Sale Motion -- explicitly
15 discussing the question of true leases versus disguised
16 conditional sales contracts, but without mentioning any of the
17 Chase agreements as a subject of that issue. Four days later,
18 the trustee entered into an agreement -- the Proceeds Agreement --
19 that explicitly referred to "the equipment leased by Chase to
20 Debtors" and expressly distinguished that equipment from "the
21 collateral securing [certain] loan agreements" between Chase and
22 the debtors.

23 Finally, the trustee submitted the Proceeds Agreement to the
24 court as an attachment to his proposed order approving the sale,
25 an order that he proposed would be binding on himself and others.
26 At no time, either in response to Chase's opposition to the Sale
27 and Assumption Motions or otherwise, did the trustee raise with
28 the court the possibility that the agreements referred to as

1 Lease Schedule Nos. 1000119253, 1000128455, 1000129904, and
2 1000126293 might be disguised secured transactions.

3 The court concludes that the trustee earlier took a position
4 contrary to his present position and that he succeeded in
5 obtaining the court's reliance on and acceptance of that earlier
6 position, as set forth in the Sale Motion, the Assumption Motion,
7 the Sale Order, and the Proceeds Agreement, when the court
8 approved the sale to Olam.¹¹

9 It is irrelevant that the trustee and Chase ultimately
10 presented a united position on the Sale and Assumption Motions,
11 and that the court was therefore not called upon to decide on the
12 merits the question whether the Chase agreements were true leases
13 or disguised financing arrangements. In the Ninth Circuit, "a
14 favorable settlement constitutes the success required" for the
15 application of judicial estoppel. Rissetto, 94 F.3d at 605.¹²

16 2. Unfair Advantage / Unfair Detriment

17 The court also concludes that the trustee would derive an
18 unfair advantage and impose an unfair detriment on Chase if he is
19

20 11. The court gives no weight to Chase's arguments
21 concerning the e-mails exchanged between its counsel and the
22 trustee's counsel after the sale, to the stipulation for an
23 extension of time for Chase to file its request for an
24 administrative claim, or to the Shondale Seymour declarations
25 filed April 1, 2010 and April 12, 2010, because it does not
26 appear the trustee's position in any of these has been accepted
27 or acted upon by the court.

28 12. See, e.g., Hay v. First Interstate Bank of Kalispell,
29 N. A., 978 F.2d 555 (9th Cir. 1992), in which a chapter 11 debtor
30 in possession obtained bankruptcy court approval of its
31 settlement of a particular creditor's secured claim and later
32 obtained confirmation of a plan of reorganization. The court
33 held the debtor estopped from later pursuing claims against that
34 creditor that had not been disclosed to the bankruptcy court.
978 F.2d at 557.

1 not estopped from claiming the leases were really secured
2 transactions.

3 In Heritage Hotel Ltd. Partnership I v. Valley Bank (In re
4 Heritage Hotel Partnership I), 160 B.R. 374 (9th Cir. BAP 1993),
5 the Ninth Circuit Bankruptcy Appellate Panel affirmed the
6 bankruptcy court's ruling that a reconstituted chapter 11 debtor was
7 estopped from prosecuting lender liability claims not disclosed
8 in its bankruptcy schedules, disclosure statement, or plan of
9 reorganization. 160 B.R. at 379. In assessing the issue of
10 detriment to the party defending against the claims, the Panel
11 observed,

12 the confirmed plan was the product of settlement
13 agreements between the parties in which both sides knew
14 the facts which could have given rise to a lender
15 liability claim and both sides gave something up in
16 exchange for the approval of the plan. Valley
17 compromised its position and reasonably relied on
representations made by Heritage [the debtor]. . . .
The obvious prejudice is in Valley's reliance on
statements in the plan which would lead Valley to
reasonably believe that Heritage would pay its claim,
not sue them for lender liability.

18 Heritage Hotel, 160 B.R. at 379.

19 Similarly, in this case, both sides must be held to have
20 given something up in exchange for what they received as a result
21 of the Proceeds Agreement and the conclusion of the sale.
22 Obviously, Chase's rights as a lessor under § 365 differed
23 greatly from those it might have asserted as a secured creditor
24 under § 363(f);¹³ in entering into the Proceeds Agreement, Chase
25 gave up the right to assert whatever protections and remedies may
26 have been available to it under § 363(f). Now that the equipment

27
28 13. See In re Pacific Express, Inc., 780 F.2d 1482, 1487
n.5 (9th Cir. 1986).

1 is gone, and with it whatever rights Chase may have had as a
2 secured creditor, the court concludes that the trustee, having
3 gained the benefit of concluding the sale without further
4 opposition from Chase, gave up the right to take the
5 diametrically opposite position that the leases were actually
6 secured transactions.

7 The court holds that judicial estoppel applies.¹⁴ Thus,
8 there is no need for the court to determine whether the lease
9 schedules were true leases or disguised secured transactions.
10 The trustee having staked out his position prior to the sale, the
11 court will treat the leases as true leases for purposes of
12 allowing Chase's administrative claim for the trustee's use of
13 the equipment.

14 **B. Actual and Necessary Expense of Preserving the Estate**

15 Section 503(b)(1)(A) affords administrative status to "the
16 actual, necessary costs and expenses of preserving the estate
17" The burden of proof is on the claimant. Microsoft
18 Corp. v. DAK Indus. (In re DAK Indus.), 66 F.3d 1091, 1094 (9th
19 Cir. 1995).

20 The Code does not specifically identify lease payments
21 prior to the rejection of a true lease as recoverable
22 administrative expenses, but where the debtor or
23 trustee actually uses the leased property, the law is
24 clear that the rent incurred is an allowable
administrative expense. [Citations]. Where the debtor
or trustee only uses a portion of the leased property,
however, he must pay an administrative expense only for
that portion of the property.

25 In re Thompson, 788 F.2d 560, 562 (9th Cir. 1986).

26 / / /

27 14. Thus the court need not reach Chase's quasi estoppel
28 argument.

1 In In re Patient Education Media, Inc., 221 B.R. 97 (Bankr.
2 S.D.N.Y. 1998), the debtor, a producer of educational video
3 tapes, utilized a custom production set on a sound stage at the
4 creditor's premises, for which the creditor charged a monthly
5 storage fee. The debtor kept the set on the sound stage even
6 during production down time, to avoid the costs of dismantling
7 and storing it elsewhere and then setting it up to resume
8 production. The debtor also wanted the set available "to impress
9 potential investors." By the time the debtor filed its chapter
10 petition, it had ceased operations entirely but kept its
11 production set on the creditor's sound stage post-petition to
12 enhance its efforts to sell its remaining assets -- its
13 intellectual property and the set itself.

14 The debtor countered the creditor's administrative claim for
15 storage fees on the ground that use of the sound stage did not
16 benefit the estate because the estate was ultimately unable to
17 sell the set. However, in allowing the claim, the court found
18 that the debtor

19 knowingly and willingly used [the creditor's] property
20 . . . to preserve and maximize the assets of the
21 estate. [fn] It continued to store its set on [the
22 creditor's] premises--and hence, [the creditor]
23 continued to render performance--using the entire sound
24 stage for that purpose. The debtor thought that
25 preservation of the set was necessary to the
liquidation process, believing that it gave the company
stature and maximized the possibility of a sale of its
assets to another video producer.

26 221 B.R. at 102-03.

27 In this case, the trustee emphasized from the outset the
28 seasonal nature of the debtor's business, the necessity of
getting the business sold before the start of the tomato packing

1 season on July 1, and the frenetic activity that would commence
2 on that date. "During the tomato packing season, the plants are
3 often running twenty-four hours a day, seven days a week. During
4 that time, the Debtors employ approximately 1,600 workers to
5 assist in the pack." Sale Motion, ¶8.

6 The trustee's financial advisors advised him "that a sale of
7 the facilities prior to the commencement of the tomato packing
8 season, on or about July 1, 2009, has the greatest chance of
9 maximizing value to the Debtors' estates." Id. at ¶13. Thus,
10 the trustee informed the court:

11 Starting now, and building up to the date on which
12 tomato deliveries begin, the Debtors' business requires
13 that significant funds be expended for maintenance and
14 repair so that the two plants are ready to run
15 constantly through the packing season. In addition,
16 the Debtors must identify, hire and train a significant
17 number of seasonal employees who must swing into action
18 as soon as the tomatoes begin to arrive.¹⁵

19 Further,

20 [t]he Debtors have no financing commitment for the
21 packing season, and lack sufficient capital to act
22 without financing. If a purchaser cannot step in by
23 July 1, 2009, the pack is not likely to occur, and the
24 value of each plant will decline rapidly, because the
25 new owner will not receive the benefit of the pack that
26 is the foundation for each Debtor's annual
27 production.¹⁶

28 In these circumstances, the court finds that the very
29 substantial equipment leased from Chase was an integral part of
30 the business ultimately sold as a going concern to Olam. The

25 15. Id.

26 16. Declaration of Brent C. Williams in Support of "Chapter
27 11 Trustee's Motion for Order Approving Going Concern Sale of
28 Substantially All Operating Assets Pursuant to 11 U.S.C. § 363,"
¶8.

1 equipment enabled the trustee to present the plants to potential
2 purchasers in the best possible light; without it, a potential
3 purchaser almost certainly would have concluded it would be
4 impossible to locate and finance suitable replacement equipment,
5 physically transport and install it in the debtors' plants, and
6 hire and train the seasonal employees in the use of the equipment
7 so the plants would be ready for round-the-clock operations by
8 July 1.

9 It is also significant that the trustee himself presented
10 the assumption and assignment of a variety of leases, including
11 the Chase leases, as an integral part of the sale. The court
12 concludes that the estate clearly benefited from having the
13 equipment on-site and available for transfer to Olam such that
14 Olam would be fully prepared for the start of the tomato pack.

15 **C. Fair and Reasonable Value of the Equipment**

16 The amount of the allowable administrative claim is
17 determined "under an objective worth standard that measures the
18 fair and reasonable value of the lease," not the actual value or
19 benefit conferred on the debtor. Thompson, 788 F.2d at 563.
20 "The rent reserved in the lease is presumptive evidence of fair
21 and reasonable value [citations], but the presumption may be
22 rebutted by demonstrating that the reasonable worth of the lease
23 differs from the actual contract rate, [citation]." Id.

24 The court concludes that the Chase equipment as a whole was
25 an essential component of the going concern sale to Olam, and
26 thus, the court declines to count plastic bins and numbers of
27 days in use or to split hairs about the portions of the glass
28 line utilized for General Mills' order as opposed to ASF/La

1 Victoria's order. The court also rejects the trustee's argument
2 that the estate did not use the majority of the equipment in May
3 and June because the tomato processing operations remained idle.
4 Any such conclusion is belied by the information presented by the
5 trustee in support of his Sale Motion, as discussed above.

6 However, the court will give the trustee an opportunity to
7 present evidence to overcome the presumption that the fair and
8 reasonable value of the estate's use of the equipment was the
9 amount of the rent reserved by the leases. The trustee will have
10 20 days from the date of this order in which to request an
11 evidentiary hearing on this issue; if he does not, the court will
12 enter an order allowing Chase an administrative claim in the
13 amount it has requested.

14 **III. CONCLUSION**

15 The court concludes that the trustee is judicially estopped
16 from denying that Lease Schedule Nos. 1000119253, 1000128455,
17 1000129904, and 1000126293 are true leases, and thus, the court
18 will grant Chase's request for an administrative rent claim. The
19 court also concludes that the trustee knowingly and willingly
20 used all the equipment that was the subject of those leases for
21 the benefit of the estate, and thus, Chase will be allowed an
22 administrative claim for the fair and reasonable rental value of
23 all the equipment. As set forth above, the court will give the
24 trustee an opportunity to establish that value in an evidentiary
25 hearing if he does not agree that the rent reserved in the leases
26 represents a fair and reasonable value.

27 / / /

28 / / /

1 The court will enter an appropriate order.

2 Dated: June 4, 2010

Robert Bardwil

3 ROBERT S. BARDWIL
4 United States Bankruptcy Judge

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CERTIFICATE OF MAILING

I, Andrea Lovgren, in the performance of my duties as Deputy Clerk to the Honorable Robert S. Bardwil, mailed, or caused to be mailed, by ordinary mail a true copy of the attached document to each of the parties listed below:

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DATE: June 4, 2010

Andrea Lovgren
Deputy Clerk

Deputy Clerk